

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 624 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BARODA CITY CO-OP BANK LTD

Versus

UPENDRA S JOSHI

Appearance:

MR BS PATEL for Petitioner

MR YN OZA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/11/97

ORAL JUDGEMENT

1. Mr.B.S. Patel, the learned counsel appearing for the Baroda City Co-operative Bank Limited, original defendant, made a statement before the Court that a Notification under Bombay Industrial Relations Act was issued covering the dispute involved in the matter which was required to be referred to the Industrial Court. He made attempts to find out the same from July 1994 till

25th September, 1997 and even today he has not been in a position to produce any such Notification before this Court to the effect that the dispute covered in the present matter is one, which is required to be referred to the Industrial Court.

2. The Baroda City Co-operative Bank Limited is the defendant in the suit instituted by Upendra Shyamlal Joshi - the original plaintiff. It appears that the original plaintiff - Upendra Shyamlal Joshi was dismissed from service on the ground that he contested election of Vadodara Municipal Corporation without permission of the Bank and such a conduct of contesting the election of a Municipal Corporation was found to be a serious misconduct by the Baroda City Co-operative Bank Limited. In such a suit, which was instituted by Upendra Shyamlal Joshi- the employee, an application was given at Exhibit 15, inter alia, praying that the order of dismissing him from service should not be implemented and/or the penalty which is sought to be imposed should be reviewed as the penalty imposed is highly excessive, unreasonable, disproportionate and violative of Article 16 of the Constitution of India. Even if such a conduct is considered to be one amounting to a misconduct, he submitted that such a conduct can never amount to misconduct. He also submitted that before filing the Nomination Paper, the employee has applied for No Objection Certificate to the Department but the Department did not give any reply and, therefore, he filed the Nomination Paper. The election, however, was not held and, therefore, no misconduct was committed. In view of the aforesaid, the employee prayed that the order dismissing him from service for filing Nomination Paper in the election to be held for Vadodara Municipal Corporation, which even in fact, were not held subsequently, he cannot be dismissed from service. The Civil Judge, Senior Division, Vadodara, in Regular Civil Suit No. 808 of 1994 passed order below Exhibit - 15 and directed the employer to reconsider its decision to impose the punishment of dismissal from service especially when even if filing a paper of nomination without obtaining consent or prior approval of the Bank to context the Election of the Corporation is regarded as a misconduct, misconduct, in fact, did not take place as the elections were not held. The learned Judge only directed to reduce the quantum of punishment in the interest of justice and to say the least, the order was more lenient and liberal to the Corporation. The Corporation, in fact, ought not to have come to the court having known that the election was not at all held and conduct did not materialise into a misconduct because it

was effaced by the fact that the election was not held at all. The attempt to add to the miseries of the employee was made by submitting before this Court that industry was one, which was covered by the provisions of the Bombay Industrial Relations Act under Notification issued and such an attempt, to say the least, was so unfortunate that since May 1994 till November 1997 Mr. B.S. Patel did not find time to lay his hand on any such Notification.

4. In the peculiar facts and circumstances of the case, the Civil Revision Application is not only dismissed but the petitioner Bank is directed to reinstate the petitioner in service forthwith within four days from the receipt of the writ of this Court failing which action shall be taken against the Chairman of the Bank by this Court. The writ of the Order to be sent down latest by today in the evening.

5. In the result, the Civil Revision Application is dismissed. Rule is discharged. There shall be no order as to costs. Ad interim stay, if any granted earlier, shall stand vacated.

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